



4  
5  
6  
7  
8 04-CV-02019-CMP  
9  
10  
11  
12  
13  
14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
FILED  
LODGED  
ENTERED  
RECEIVED  
SEP 24 2004  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
MR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CV04-2019C

Case No.:

AT LAW AND AT ADMIRALTY

**SEAMEN'S COMPLAINT IN REM AND  
IN PERSONAM FOR WAGES AND  
PENALTIES--ALL WITHOUT PAYMENT  
OF COSTS, 28 U.S.C. § 1916**

MORGAN & RUTH DAVIES,  
Plaintiffs,

vs.

F/V ALLIANCE, Official Number 1029958,  
her engines, machinery, appurtenances  
and cargo, in rem; OFFSHORE  
ADVENTURES, INC., NORMAN HUGH  
SMITH, ALICE SMITH, and THE SMITH  
FAMILY TRUST, in personam;  
Defendants

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
COMES NOW the plaintiffs and complain of the defendants alleging upon  
information and belief as follows:

1. Plaintiffs, Morgan & Ruth Davies, bring and maintain this action pursuant  
to 28 U.S.C. § 1333, U.S. Const. Art. III, sec. 2, and the General Maritime Law.

2. The contract of employment at issue in this case was entered into in King  
County, Western District of Washington. On information and belief, the in personam  
defendants are residents of Snohomish County, Western District of Washington.

3. Plaintiffs are seamen and wards of this Court and elect to take advantage of  
the provisions of 28 U.S.C. § 1916 to proceed without prepayment of costs or fees.

SEAMEN'S COMPLAINT IN REM AND IN  
PERSONAM FOR WAGES AND PENALTIES--ALL  
WITHOUT PAYMENT OF COSTS, 28 U.S.C. § 1916  
CASE NO:

JOHN W. MERRIAM  
4005 20th Avenue West, Suite 110  
Seattle, WA 98199  
(206) 729-5252 • FAX (206) 729-1012

1       4. The in personam defendants herein are individuals, a corporation, and  
2 another form of business entity unknown to the plaintiffs that exist under and by the  
3 virtue of the laws of a state or states unknown to plaintiffs and at all times herein  
4 mentioned were acting by and through their officers, agents, servants, employees and  
5 representatives, and have principal places of business or are doing business in the  
6 Western District of Washington.

7       5. The F/V Alliance is a fishing vessel, documented by the United States,  
8 official number 1029958. Said vessel has its home port in the Western District of  
9 Washington or will be found in the Western District of Washington during the  
10 pendency of this action. During all times herein mentioned said vessel was owned or  
11 bareboat chartered by the defendants, and was engaged in maritime commerce.

12       6. In 1998, the defendants hired the Davies to operate defendant vessel as  
13 master and crewmember, respectively. The plaintiffs manned the vessel continuously  
14 until she was seized in March 2004 in the Pacific Islands by a U.S. Marshal.

15       7. On November 21, 2000, plaintiffs contracted with the defendants to  
16 purchase defendant vessel. The plaintiffs agreed to forego receipt of their wages while  
17 operating the vessel, in order to earn the downpayment for her purchase. Plaintiffs  
18 forewent in excess of \$50,000 in wages, said money being held by the defendants and  
19 applied toward the downpayment for purchase of the vessel.

20       9. The defendants had no intention of selling the vessel to the plaintiffs.  
21 Rather, the plaintiffs were tricked into taking care of the vessel while defendant  
22 Norman Smith was in prison.

23       10. The defendants interfered with the plaintiffs' attempt to complete the  
24 purchase of the vessel by interfering with refinancing, in constructive breach of the  
25

**SEAMEN'S COMPLAINT IN REM AND IN  
PERSONAM FOR WAGES AND PENALTIES--ALL  
WITHOUT PAYMENT OF COSTS, 28 U.S.C. § 1916  
CASE NO:**

**JOHN W. MERRIAM**  
4005 20th Avenue West, Suite 110  
Seattle, WA 98199  
(206) 729-5252 • FAX (206) 729-1012

1 contract for sale. The plaintiffs repudiated the contract for sale of the vessel on  
2 January 5, 2003 and demanded their earned wages. Said demand was denied by  
3 defendants.

4 11. Defendants' failure to pay vessel obligations caused the vessel to be seized  
5 in Fiji in March 2004. The defendants forced the plaintiffs off the vessel, without  
6 funds. Plaintiffs remain in Fiji to this day, destitute.

7 12. Defendants filed a lawsuit against the plaintiffs in Kitsap County Superior  
8 Court for the State of Washington, cause number 04 2 008702. The defendants---  
9 plaintiffs in the superior court case---sued the plaintiffs in this case for conversion of  
10 fishing proceeds and breach of contract. The Kitsap County Superior Court purported  
11 to 'consolidate' the plaintiff's claim of lien against defendant vessel, filed with the  
12 National Vessel Documentation Center.

13 13. The Kitsap County Superior Court lawsuit is unfounded, and a thinly-  
14 disguised attempt by defendants to avoid their obligation to pay wages to the plaintiffs  
15 that were withheld based upon the now-repudiated contract for purchase of the vessel.

16 14. Plaintiffs claim Washington State law double wage penalties, and attorney  
17 fees and costs under the general maritime law as well as state statute.

19 WHEREFORE, plaintiffs pray judgment against the defendants as follows:

20 21 1. For a declaration that the plaintiffs holds claim to a preferred maritime  
22 lien against the defendant vessel, her engines, machinery, appurtenances  
23 and cargo;

24  
25  
**SEAMEN'S COMPLAINT IN REM AND IN  
PERSONAM FOR WAGES AND PENALTIES--ALL  
WITHOUT PAYMENT OF COSTS, 28 U.S.C. § 1916  
CASE NO:**

**JOHN W. MERRIAM  
4005 20<sup>th</sup> Avenue West, Suite 110  
Seattle, WA 98199  
(206) 729-5252 • FAX (206) 729-1012**

2. For arrest, condemnation and sale of the defendant vessel including her engines, machinery, appurtenances and cargo;
3. For earned wages;
4. For such special damages, including found, as may be shown by the proofs herein;
5. For double wage penalties;
6. For pre-judgment interest on all claims as is in the law provided;
7. For costs of suit and reasonable attorney fees;
8. For such other and further relief, including punitive damages, as is met and just in the circumstances.

DATED this 23rd day of September 2004.

By:   
John Merriam, WSBA#12749  
Attorney for Plaintiffs  
4005 20th Avenue West, Suite 110  
Seattle, WA 98199  
Telephone: (206) 729-5252  
Fax: (206) 729-1012  
E-mail: [john@merriam-maritimelaw.com](mailto:john@merriam-maritimelaw.com)

I am the attorney for the plaintiffs in this action and have knowledge of the matters asserted in the above complaint based upon information provided by the plaintiffs.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the allegations of the above complaint are true and correct to the best of my knowledge and belief.

Dated at Seattle, Washington this 23rd day of September 2004.

John Merriam

**SEAMEN'S COMPLAINT IN REM AND IN  
PERSONAM FOR WAGES AND PENALTIES--ALL  
WITHOUT PAYMENT OF COSTS, 28 U.S.C. § 1916  
CASE NO:**

**JOHN W. MERRIAM  
4005 20<sup>th</sup> Avenue West, Suite 110  
Seattle, WA 98199  
(206) 729-5252 • FAX (206) 729-1012**